Murray-Aynsley, J.—This is an appeal by the Deputy Public Prosecutor. The respondents were charged under section 13 (i) of the Excise Enactment (Cap. 133).

The facts are shortly that the authorities found certain articles which were alleged to be component parts of a still but which were not capable by themselves of forming a complete still. The Magistrate took the view that it was necessary for the prosecution to prove that such components must be sufficient to form a complete still; to use his own words—

> "In my view a person does not commit an offence under this section for merely having in his possession utensils unless it shall first be proved that such utensils can, either singly or composed together, manufacture some form of liquor. In other words, I consider that it is not enough for the prosecution to prove just possession of utensils, but it must also prove that such utensils must be capable of manufacturing some form of liquor".

The words in the section are "still, utensil or other apparatus for distilling or manufacturing, etc."

If the apparatus had to be complete it would be sufficient to say still.

I think part of a still is a utensil and comes within the terms of the section if its purpose can be proved. If this interpretation is not correct it would be easy to evade the section by keeping a necessary component off the premises.

I have read the recent decision of the Court of Appeal in *Public Prosecutor v. Manickam*[1]. In that case it appears that the component part of a complete still were found but I think that the reasoning would equally apply where some of the components only were found.

The state of affairs is therefore that the Magistrate had evidence that there were utensils which might have formed part of a still, but owing to the view of the law which he took he did not actually find that they were parts of a still.

The defence appears to have been that they once formed part of a still but were now being used for other purposes. If that were true it would I think be a defence.

In the circumstances there must be a new trial before another Magistrate.

The Deputy Public Prosecutor also appealed against the acquittal of the third respondent on the ground that there was some evidence against him. I do not propose to interfere with this part of the decision.

Order in cases of respondents 1 and 2: new trial.

Order in case of respondent 3: appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

June 14, 1940.

AR. PL. ARUNASALAM CHETTY

vs.

AZIZ KHAN.

[PERAK CIVIL SUIT No. 210 of 1939]

Contract—Infancy—Promissory note, consideration for—Part given during infancy, part subsequently.

The plaintiff sued on a promissory note the consideration for which was the cancellation of a promissory note in respect of a debt incurred by the defendant during his infancy plus a further advance of $50 made after he had attained his majority.

Held, that subject to relief under the Usurious Loans Enactment (Cap. 63) the further advance was good consideration for the whole amount payable under the promissory note.

F. A. Reid for plaintiff.

B. K. Dass for defendant.

Murray-Aynsley, J.—In this case, an action on a promissory note, no evidence was called on either side. The facts must therefore be taken from the pleadings.

From these it will be seen that the defendant who was born in 1912 received $300 in cash in the year 1929, and executed an I.O.U. for that amount.

In the year 1930 he executed a further I.O.U. for $536 which represented the previous I.O.U. and accrued interest and in the same year a further I.O.U. for interest.

In January, 1937, the defendant executed the promissory note on which he is now sued. This was for $1,000 of which $50 was a fresh advance and the remainder represented indebtedness contracted during infancy.

Now it is clear that contracts by infants are by the Indian Contract Act void which means "not enforceable by law". The defendant was therefore not

obliged to pay what he had received during infancy and except under sections 2 (*d*) and 25 (*b*) if the promissory note had been executed solely on account of what had happened during infancy it would be void for lack of consideration. But here there is consideration, viz., $50, and as the plaintiff has performed his part of the contract and there is no fraud, undue influence or mistake, that is a good contract, except so far as relief may be given under the Usurious Loans Enactment. This seems to me quite clear on principle.

It is not therefore necessary to decide whether advances during infancy may be consideration for a promise on attaining majority, on which there is a great degree of disagreement among the Indian Courts. I think that there is nothing in the Indian Contract Act to exclude them, there is nothing like the Betting and Loans (Infants) Act of 1892.

I think that the case is one which calls for intervention under the Usurious Loans Enactment.

I think that in the circumstances the defendant should repay the $300 actually received with interest from the date of his majority at 12 per cent. and on the sum of $50 with interest since the date of the promissory note at the same rate. The plaintiff is entitled to costs of the action.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

HOWES, J.

July 15, 1940.

TAN KHOO CHOR vs. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 71 of 1940]

Customs Enactment (No. 5 of 1936), sections 113 and 117—Criminal Procedure Code (Cap. 6), section 407—False declaration—Forfeiture of goods.

The accused was convicted of signing a false declaration, punishable under section 113 (i) (a) of the Customs Enactment (No. 5 of 1936). The Magistrate ordered the confiscation of the goods concerned.

Held, that the "notification or rule" referred to in section 117 of the Customs Enactment does not include a declaration made by the owner of goods under section 30 of the Enactment.

That section 407 of the Criminal Procedure Code does not contain a general power of forfeiture: that section applies only when a right of forfeiture exists.

And that in the absence of any provision for forfeiture in section 113 of the Customs Enactment, the punishment for offences thereunder stands on a different basis from the punishment under sections which prescribe forfeiture.

Case referred to:—

(1) *Tan Hoon Swee v. The Public Prosecutor* (1927) 6 F.M.S.L.R. 191.

K. C. Chan for appellant.

J. F. Draper, Deputy Public Prosecutor, for respondent.

Howes, J.—I am not satisfied that the Magistrate had any power to make the order for confiscation which he purports to have done under section 117 of the Customs Enactment. That section gives a right to seizure when the person importing, exporting, or removing any goods does so in contravention of the provisions of any notification or rule made under the Enactment, or of any licence issued thereunder.

I cannot understand *Mr. Draper's* argument that the notification in that section would include a declaration made by the owner of the goods under section 30 of the Enactment nor can I accept his argument that section 407 of the Criminal Procedure Code contains a general right of forfeiture. It has been decided by the Court of Appeal in the case of *Tan Hoon Swee v. The Public Prosecutor*[1], that that section only applies when the right of forfeiture exists.

The offence charged in this case was signing a false declaration, punishable under section 113 (i) (a), and the accused has been punished for making that false declaration. There is nothing at the end of section 113 to say that the goods dealt with in contravention of this section are liable to seizure as appears at the end of sections 112 and 117 (ii). I can only assume that the punishment prescribed by section 113 for making the false declaration stands on a separate basis. It does not interfere with the right of the customs authorities to deal with the goods (if they are in fact dutiable goods) in the same way as if they had examined them after the declaration was made. I understand that in the present case the goods were not dutiable.

The appeal is allowed, and the Magistrate's order for confiscation quashed.

Appeal allowed.